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The Honorable Tom Bliley  
Chairman  
House Committee on Commerce  
2125 Rayburn Building  
Washington, D.C. 20515

Dear Chairman Bliley:

Thank you for your letter in reply to a letter Fred Eames and I sent you on March 10, 2000 offering our comments on H.R. 2944 as passed by the Subcommittee on Energy and Power. We write, as before, on behalf of an informal coalition of companies owning significant transmission assets. You asked that I respond to 16 questions, and my responses are provided below.

We appreciate your request for our comments. If we can be of further assistance, please call upon us.

- Question:** Your letter indicates that H.R. 2944 successfully addresses a number of issues. Do you believe it was successful in resolving Federal/State jurisdictional issues. Many respondents felt that the jurisdictional boundaries between Federal and State regulators needed further clarification. Could you please describe your understanding of the provisions resolving Federal/State jurisdictional issues and the respective jurisdictions of Federal and State regulators?

**Response:** There are a variety of issues addressed by H.R. 2944 that could be considered as Federal/State jurisdictional issues. However, in Washington parlance "jurisdictional issues" has come to mean the issue of whether FERC or the States should have regulatory jurisdiction over bundled retail sales. We will address the question with that in mind.

The Federal Power Act grants FERC jurisdiction over interstate transmission of electricity and over sales for resale (*i.e.*, wholesale sales). Jurisdiction over all other aspects of transmission is retained by the States. There has long been a question as to what constitutes “interstate” transmission. In the 1972 case of FPC v. Florida Power & Light, 404 U.S. 453, the Supreme Court decided that, because electrons flow at the speed of light according to the laws of physics across the interconnected transmission grid without respect to State boundaries, transmission service was an activity in interstate commerce and could be regulated as such. In that case, it was argued that a transmission transaction between two Florida utilities, where one utility was interconnected to a Georgia utility, was not interstate commerce and therefore not subject to FERC jurisdiction. The Supreme Court disagreed.

Although the precise extent of the Commission’s jurisdiction is unclear, the Commission has never laid jurisdictional claim to a broad category of transmission service – transmission in connection with bundled retail sales. Such sales have been regulated under State law. However, as State competition laws have been implemented, they have sharpened the question of whether FERC’s jurisdiction over transmission in interstate commerce extends to transmission for bundled retail sales in interstate commerce. *If FERC chooses not to exercise jurisdiction over bundled retail sales, the current shared State and federal jurisdiction will continue. We do not think the current jurisdictional situation requires legislative action.*

*Section 102 of H.R. 2944 seeks to codify the current state of practice with respect to jurisdiction. We are comfortable with this section as written.*

2. **Question:** Chairman Hoecker’s comments on H.R. 2944 stated that “H.R. 2944 fails to adequately address the jurisdictional problem evidenced by the Eighth Circuit’s recent holding in Northern States Power Co. v. FERC . . .” Do you agree or disagree? How should Federal legislation address this issue?

**Response:** Some stakeholders believe that the Eighth Circuit Court of Appeals holding in Northern States Power Co. v. FERC, 176 F.3d 1090 (8th Cir. 1999), cert. denied, 120 S.Ct. 1221 (2000), has the practical effect of preventing FERC from exercising jurisdiction over bundled retail transmission, an exercise of authority those stakeholders would prefer that FERC undertake. We think that, as a practical matter, this effect would be of little significance, given that FERC would not likely have exercised this jurisdiction even without the Eighth Circuit’s decision.

As mentioned above, H.R. 2944 appears to be intended to codify current practice and clarify that FERC’s jurisdiction over transmission in interstate commerce does not extend to the transmission component of interstate bundled retail sales. However, it is valid - again, because it appears to be the intent of the bill - to assert as some do that the bill goes beyond current law in expressly granting States jurisdiction over the transmission component of bundled retail sales.

The jurisdictional division proposed by H.R. 2944 - which is essentially the same as the jurisdictional division proposed by S. 2098 (Murkowski-Landrieu), S. 1273 (Bingaman), and H.R. 2786 (Sawyer-Burr) - is a reasonable one.

An alternative would be to remove all provisions relating to this jurisdictional issue and let current law stand. Some have argued that a lack of clarity in current law necessitates a resolution to the issue. However, as providers of transmission services, we have not had difficulty in continuing to provide price and schedule transmission service.

3. **Question:** It seems that for there to be the appropriate price signals and therefore incentives for investing in transmission facilities, transmission service should be priced irrespective of whether it is provided to a retail or wholesale customer - e.g., whether it is bundled or unbundled. What is your opinion on the matter?

**Response:** We are strong proponents of expansion of the transmission system, and we assert (as do a variety of other commentators) that providing appropriate pricing is necessary to create incentives - or more precisely to eliminate disincentives - to enlarge transmission facilities and to operate efficiently. Handing regulatory authority over all transmission rate setting to FERC could be a major setback for transmission expansion if the FERC trial staff continues to recommend, as it did in the recent Southern California Edison and Pacific Gas & Electric cases in California,<sup>1</sup> rates substantially below what the States have set for the same transmission assets *and below what the market considers a reasonable rate of return.*

Whether a transmitting utility must file for rates with the FERC, or must file with both the FERC and the States, is of much less importance to the goal of transmission expansion than what rates are actually set by the rate-setting entity or entities.

4. **Question:** Is it possible for efficient and effective RTOs to form if States retain jurisdiction over bundled transmission services and rates?

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<sup>1</sup> See Southern California Edison Co., 86 F.E.R.C. ¶ 63,014 (1999) (initial decision establishing an ROE of 9.68 percent for Southern California Edison's transmission assets, which was approximately 200 basis points below the return that the utility had received on the same assets when regulated by the State of California); Direct Rate of Return Testimony of Staff Witness Douglas M. Green, Pacific Gas & Electric Company, Docket No. ER99-4323-000, February 11, 2000 (staff testimony calling for Pacific Gas & Electric Co. to receive a 9.8 percent ROE for its transmission lines under the California ISO, compared to 12.5 percent currently earned under state regulation); Howard Buskirk, "FERC Staff Strikes Again, Recommends ROE Cut For PG&E," The Energy Daily, February 16, 2000.

**Response:** Yes. States retain jurisdiction today over bundled transmission services and rates in areas where efficient and effective RTOs have formed. We direct your attention specifically to the PJM ISO.

State jurisdiction over bundled retail sales does not affect RTO formation. We are not familiar with arguments that it does affect RTO formation. We would be happy to respond in more detail to this question if we could hear the arguments about why State jurisdiction over bundled transmission services and rates is linked to formation of efficient and effective RTOs.

5. **Question:** Your letter states “RTO formation will have important benefits for customers and the marketplace...” and “[w]e think RTO formation is useful to foster creation of regional electric markets, so we support the bill’s goal of encouraging RTO formation.” Your letter also indicates a lack of support for mandatory participation in RTOs. Please explain what recourse other users of the transmission system or consumers should have if a transmission owner refuses to participate in an RTO. How can they keep a transmission owner that does not want to participate in an RTO from denying them the benefits that flow from RTO participation?

**Response:** RTOs will provide numerous benefits to the marketplace, including, as recognized by FERC’s Order No. 2000, improved efficiency and market performance, and facilitation of lighter handed regulation. These benefits are doubtless important. However, while RTOs are helpful to the creation of a national marketplace, they do not justify the deprivation of private property rights inherent in ordering as a matter of law, or authorizing a government agency to order, that transmission owners surrender ownership or control of their assets to a third party operator. Thus the question is not how to keep a transmission owner from denying these benefits to users, but how to encourage owners to provide them. We note that the vast majority of transmission owners subject to FERC jurisdiction, including our clients, already are participating in or forming an ISO or other RTO voluntarily. The benefits justify government encouragement for RTO participation, but not wresting control of property from its owners by legal mandate.

There is, however, a claim that RTO participation confers another benefit: preventing transmission operators who are part of vertically-integrated entities from “gaming the system” to prefer their own generation and their own customers. This last “benefit” seems to be the one on which proponents of mandatory RTO participation most strongly base their arguments.

We think the burden to show “gaming the system” is on those who argue Orders No. 888 and 889 have not provided for nondiscriminatory open access, and that they have not begun to meet that burden. Order No. 888 required open access to the transmission grid on a non-discriminatory basis, and Order No. 889 set rules of procedure to ensure that access. The number of formal complaints filed with FERC alleging discrimination is extremely low to the point of

being negligible, especially in light of the virtual explosion in the number of wholesale and retail transactions subject to the orders. The record of Orders No. 888 and 889 speaks favorably of requiring all transmitting entities to be subject to their requirements to prevent discrimination. We acknowledge that a competitive marketplace could provide incentives for discrimination, but there is all the difference in the world between an incentive for wrongdoing and actual wrongdoing.

We would ask the Committee to insist on evidence of discrimination prior to concluding that it exists, and evidence that existing remedies are insufficient. We also ask that those against whom allegations are made be given an opportunity to respond before the Committee concludes additional FERC authority or an RTO mandate are warranted.

6. **Question:** Your letter indicates support for Section 105(b) of H.R. 2944. However, the section-by-section analysis of H.R. 2944 prepared by Congressman Barton states "it is unclear how this provision will ensure the introduction of new transmission technologies." Could you please explain in detail how this provision will encourage expansion of transmission facilities?

**Response:** Section 105(b) of H.R. 2944 creates a new section 117 of the Federal Power Act (FPA) to set new standards for FERC rate-setting. We strongly support these provisions. We had an opportunity to meet with your staff after the Committee's section-by-section summary of H.R. 2944 was released. We specifically discussed section 105(b) and our interpretation of the provisions. The quote in your question refers to new technologies, but your question refers to expansion of transmission facilities, which may be done with or without introduction of new technologies. We will address both issues.

If your question asks whether a rate-setting regime that specifically directs FERC to "promote . . . the expansion of transmission networks [and] the introduction of new transmission technologies" is a guarantee of accelerated transmission expansion and introduction of new technologies, it is no more so than the formation of RTOs is a guarantee of more competitive markets and consumer benefits. However, appropriate rate-setting is a condition precedent to encouraging voluntary research, development and deployment of capital intensive new technologies and to more transmission capacity.

The only kind of empirical evidence available to answer this kind of a question "in detail," as you request, is to quote those who would invest in transmission to determine why they are not doing so now. One need look no further than Wall Street. Paul Addison of Salomon Smith Barney, in commenting on the FERC RTO Notice of Proposed Rulemaking, said in support of providing business incentives to transmission owners that "[t]he real value of the new, commercially-incentivized transmission company might come from its ability to offer an unimagined new set of product offerings, or its ability to do so much more with existing assets. .

.. [C]onsider the airline industry, which still sells the same perishable commodity, a seat on a flight, but has found so many ways to offer the product in different manners, and sell so many more seats." In a paper entitled "Maximizing Shareholder Value From Transmission Assets," Andrew Vesey of Ernst & Young LLP wrote "FERC should be encouraged to rely on [incentive-based rates] to address system efficiency, capacity, technological innovation and capacity growth investment concerns as opposed to direct management mechanisms."

Or look to commentary from transmission owners themselves. William McCormick, CEO of CMS/Consumers Energy, said last year "You can have all the ISOs and RTOs and transcos in the world and if you can't build transmission lines because you can't get the right of way or nobody is willing to invest in them because the rates of return are too low, then people are kidding themselves." Thirty-five utilities in a July, 1999 letter to FERC opposing transmission rate cuts in the Southern California Edison rate case wrote "low rates of return on equity would discourage attraction of capital for needed investment in transmission expansion and upgrades. . . . [T]here is an urgent need to expand the transmission system in many parts of the country to promote the commission's goal of competitive and reliable power markets."

Or take the commentary of one of the industry's pre-eminent research and analysis organizations, Hagler Bailly, whose representative, Dr. Charles Falcone, wrote in The Energy Daily last June,

Take a look at utility plans for grid expansion for the next ten years and notice what isn't there. Electric demand is growing and merchant plants are sprouting left and right. Yet the grid is nearly static. Why? Because of the expectation that the investor will suffer. Face it, FERC has no credibility with utility management or Wall Street. FERC has historically set rates of return (ROR) well below those approved in the states. But this did not cripple utilities under the old paradigm because FERC regulated only a small part of most utilities' business - even a small part of their transmission business. So lower FERC RORs hurt utilities, but not enough to alter their investment patterns. And under that structure utilities built transmission to support their vertically integrated business. FERC pricing policy is unlikely to cripple utilities in the future because their executives are good businessmen and know the score. You can't force utilities or anyone else to invest in transmission. That's one aspect of the business which will remain voluntary (maybe the only one). But for competition to thrive, the grid must expand. . . . Capital will not flow into transmission any more than gas will flow out of the ground if pricing policy is

unsound, and the result will be an artificial scarcity of transmission.

As Commissioner Hebert has written, "In order for there to be new transmission, there must be investors willing to raise debt capital. In order for the investment community to get more excited about placing their bets on transmission assets than treasury bonds, there must be an opportunity to earn a reasonable return based on the risk involved."<sup>2</sup>

We can provide extensive additional commentary from other sources if you desire.

7. **Question:** You support H.R. 2944's transmission incentive pricing provisions that include performance based pricing, negotiated rates and market-based rates. Many respondents hold the view that not only is such incentive pricing not necessary, but rather it represents excessive compensation. Similarly, the section-by-section explanation of H.R. 2944 notes that the "pricing provisions added by the Sawyer amendment appear to require FERC to approve rates that are higher than it would approve under current law – and closer to monopoly rents – if such rates promote the economically efficient transmission of electric energy or promote expansion." Do you agree with this statement? Please explain.

**Response:** Transmission service is today a regulated monopoly, with rates set to allow the recovery over a set period of time of the cost of constructing the transmission facility and the cost of providing service, plus a rate of return. Under sections 205 and 206 of the Federal Power Act, rates are required to be "just and reasonable." Virtually every State in the country applies the same requirement. Section 105(b) of H.R. 2944 leaves sections 205 and 206 fully intact. If "monopoly rents" is a term that applies to just and reasonable rates, then we agree. Federal law will continue to prohibit unjust and unreasonable rates.

A just and reasonable rate is by definition not excessive. The Congress has a public policy goal of vigorous competition. We support that goal, and suggest that it is better served by requiring FERC to provide just and reasonable transmission rates that also promote economically efficient transmission, expansion of the transmission network, and introduction of new technologies, *than by failing to address rates and the capacity stagnation that has resulted.*

We do not view the negotiated rate provisions or the market-based rate provisions of H.R. 2944 as "incentive" rates. We think both of these provisions may serve to benefit consumers if FERC determines that market conditions warrant their use.

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<sup>2</sup> Curtis Hebert, Jr., "The Year in Review: Electric Transmission," 12 No. 10 ELECTRICITY JOURNAL (December 1999).

8. The negotiated rate provision of H.R. 2944 was deemed by many respondents as being fundamentally inconsistent with providing non-discriminatory and transparent transmission. You don't share that view. Please explain.

**Response:** We believe the negotiated rate provision in H.R. 2944 is fully consistent with providing non-discriminatory and transparent transmission service. Our opinion is that readings which view it as discriminatory fundamentally misinterpret the language. A good analogy to this language would be to the sale of a car. State laws regulate the manner in which car dealers present information on the sale price of a car to consumers, much in the same way that federal regulations require sellers of transmission service to present information on the price and availability of transmission capacity in a certain manner. A car buyer can pay the advertised price or negotiate for a better one. Negotiating a better price does not discriminate against other car buyers. Price information they receive is still subject to State regulation.

The language passed by the subcommittee states that "the Commission may permit the charging of negotiated rates for transmission services without regard to costs whenever an individual company or companies are willing to pay such negotiated rates, provided, however, that such costs shall not be recovered from other transmission customers." If the customer is not willing to pay or even negotiate a rate, the customer can continue to receive service at the publicly posted rate. Other customers will not be disadvantaged by the negotiated rate because the language specifically prohibits the transmission provider from charging other customers to make up for revenues lost to lower negotiated rates.

We believe FERC has the authority to authorize negotiated rates today, but it has declined to use this authority. This language provides FERC with encouragement to let the marketplace work.

9. **Question:** Many respondents urged the elimination of incentive pricing and negotiated pricing rate provisions. They argued that since transmission responsibilities, even in a competitive market, will remain a monopoly function, there was no need to incent transmission owner to simply complete their mission of providing transmission service. They believe there are better, market-oriented solutions to ensure construction of needed transmission, e.g. by empowering RTOs to bid out construction that they conclude is necessary to meet regional needs for reliability. Please comment.

**Response:** We are unsure that we understand the concept of allowing RTOs to "bid out construction." *Whether transmission construction is "bid out" by RTOs or constructed by individual utilities, the question for the entity paying for the construction remains: is this a reasonable investment?*



In the past, electric utilities had a clear value proposition for constructing transmission facilities. They had a customer need for power, which required them to build a power source, which then required a link from the power source to the customers. The transmission facilities served as that link. Construction of the link was economically justified not only by the rate of return on the transmission facilities themselves, but on the rates of return for the entire vertically-integrated business of providing electricity to customers. That is, transmission was a necessary part of justifying construction of generation facilities, as well as transmission facilities. *This interrelationship made utilities more willing to expand transmission facilities even in the face of low rates of return.*

Today the traditional value proposition for transmission has been eliminated. *In a large number of cases, transmission improvements no longer inure to the benefit of the rest of the enterprise, which means the improvements must economically stand on their own.*

The value proposition today for transmission is almost solely the rate of return earned on the transmission facilities themselves. FERC is signaling a desire to slash the rate of return for wholesale sales, as evidenced by recent staff recommendations in the Southern California Edison case and the Pacific Gas and Electric case. As a Wall Street investment expert told a group of congressional staff recently on a seminar we sponsored in New York City, put yourself in the shoes of an investor with the opportunity to invest in a business where the price of what you make is regulated by the government, and the government is trying to reduce the rates of return. The rate of return already fares poorly in comparison with unregulated businesses. All other aspects of the business are highly regulated, and some in the government are proposing vast amounts of new regulatory authority. The business used to have a predictable customer demand, but deregulation has fundamentally changed demand patterns. And finally, the government is proposing to take control of the business away from the people who own it and turn it over to a third party with no profit incentive. Would you ever invest in that business?

The marketplace is providing the answer, and the answer is no. The most recent report of the North American Electric Reliability Council (NERC) on the amount of new transmission construction shows that only approximately 6,500 miles of new transmission lines are planned for the next ten years. This is a pittance in comparison with the amount of new capacity needed.

RTOs can bid out all the transmission construction they like, but if no one responds to the bait of low returns and high regulation, the result will be continued transmission constraints, intensified fights over who gets to use the transmission system for their transactions and who doesn't, exacerbated mistrust by transmission users toward transmission owners, and stunted competition. We would be interested to learn about how proponents of transmission construction bidding anticipate RTOs will pay for expansion if the only bids submitted necessitate increased rates of return.

The answer is a simple economic one: make transmission an attractive investment and people will build it.

10. **Question:** How do you view FERC's Order 2000, specifically the incentive pricing provisions? Please compare and contrast the incentive pricing provisions included in H.R. 2944 with those in Order 2000.

**Response:** Order No. 2000 moves in the right direction, stating that the Commission will "consider" a variety of "innovative" rate treatments to promote the formation of RTOs.<sup>3</sup> This would be a welcome shift from the position taken, for example, by a Commission administrative law judge in the Southern California Edison case, noted above, in which a utility was effectively penalized for joining an RTO, receiving a substantially lower RTO under FERC regulation of transmission assets committed to an RTO than the transmitting utility had received previously under California regulation. Whether the Commission will implement similar reforms for all transmission rates remains to be seen. In light of the significance of transmission to competitive markets, it is crucial that Congress provide clear guidance that new technology and expansion of transmission networks are necessary.

Although the innovative pricing provisions of Order No. 2000 are a positive step, it should be noted that these provisions do not bind the Commission and apply only in the context of RTO participation. The pricing reform language of H.R. 2944 would, by contrast, require the Commission to encourage innovative pricing proposals voluntarily filed with the Commission, whether or not in connection with RTO participation. The innovative pricing provisions in H.R. 2944 would also, for the first time, place the pricing issue squarely on center stage as a matter of law. This would provide the Commission with additional statutory support in implementing the policy of encouraging transmission expansion as set forth in the Transmission Pricing Policy Statement, Order No. 2000, and other Commission statements.

11. **Question:** What is your assessment of FERC's belief that the Federal Power Act empowers it to require utilities to form or join RTOs when necessary to mitigate market power, remedy undue discrimination or other anti-competitive effects?

**Response:** As a practical matter, we agree wholeheartedly with the voluntary approach to RTO formation taken by the Commission in Order No. 2000. As a matter of law, we note that section 202(a) of the FPA authorizes the FERC to "divide the country into regional districts for the voluntary interconnection and coordination" of transmission facilities. We disagree with the assertion that the Commission has the authority to override the voluntariness requirement of section 202(a) "when necessary to mitigate market power, remedy undue discrimination or other

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<sup>3</sup> Order No. 2000 at 705.

anti-competitive effects.” While the Commission has certain powers and responsibilities under FPA sections 205 and 206 to ensure that rates are just and reasonable, and under section 203 to ensure that mergers are in the public interest, these statutory provisions do not trump the voluntariness requirement of section 202(a); nor, in the absence of section 202(a), would these provisions by themselves authorize the Commission to impose radical, antitrust-style, structural remedies such as requiring a transmission provider to relinquish physical control of its transmission assets to a third-party operator.

12. **Question:** How do the grandfathering provisions of H.R. 2944 affect existing RTOs or the formation of new RTOs?

**Response:** *The grandfathering provisions of H.R. 2944 relate only to the bill’s effect on consumer protection, interconnection, aggregation and net metering provisions of State laws.* We are not aware of any problem with an existing State law that would affect any established or proposed RTO. However, given that the grandfathering provision subordinates federal provisions to State laws enacted within three years of the enactment of the bill, it is possible that a State could devise a provision to affect RTOs under the guise of consumer protection, interconnection, aggregation or net metering interests.

13. **Question:** Your letter states its support for expediting the merger review process. H.R. 2944 places a 180 day time limit on FERC’s consideration of mergers. Some respondents argue that such a limit would result in FERC arbitrarily rejecting mergers based upon inadequate time consideration. Does your group support the time limits in H.R. 2944?

**Response:** As our March 10, 2000 letter to you states, we think the 180 day time limit provision, authored by Congressman Burr, is a useful provision and we support it. We do not preclude the possibility that Congressman Burr or someone else may propose another mechanism we could support that would streamline or eliminate the section 203 process.

As for the Commission “arbitrarily rejecting mergers based upon inadequate time consideration,” the Burr amendment does not appear to change the bases on which FERC is permitted to approve or disapprove transactions subject to section 203. The last sentence of section 203(a) provides that “[a]fter notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.” Thus, under current law, a disapproval must be based upon a finding, made through a public process, that the transaction is not consistent with the public interest. Arbitrarily rejecting a transaction without making such a finding would violate the agency’s basic duty under the Administrative Procedure Act to provide a reasoned basis for its decisions, and is therefore not an option open to FERC. The mere addition of a time limit would not change this legal duty.

Some RTO proponents simultaneously argue for expanding FERC's jurisdiction to review transactions under section 203 at the same time as they call for speedy RTO formation. These two positions are obviously at odds with one another.

14. **Question:** Your letter is silent on the issue of reliability. H.R. 2944 contains provisions addressing the reliability of the transmission grid. Do you believe enactment of those provisions will enhance grid reliability? Please elaborate.

**Response:** H.R. 2944 does contain provisions addressing the reliability of the transmission grid. The most important of those provisions are contained in section 105 of the bill, which deals with "Expansion of Interstate Transmission Facilities."

We support enforceable "compliance with mandatory reliability rules, fairly developed and fairly applied to all participants," as David Cook of NERC put it in his recent Senate testimony. Congress should include legislation to achieve that goal as part of its legislation. Congress should remember that the industry already operates under reliability standards on a voluntary basis today, and with rare and temporary exception the industry is in full compliance. Making the standards mandatory and enforceable will serve to deter the infrequent instances of non-compliance, but it will not address the underlying shortage of transmission capacity that is the greater long-term threat.

We neither promote nor oppose the idea of stand-alone reliability legislation, but we do recognize that external events like a reliability problem over the summer could provide strong impetus for congressional action, even though comprehensive legislation may be politically infeasible. If Congress does consider a stand-alone reliability bill, we urge you (and expect to do so in more detail shortly) to focus the bill primarily on the need for transmission expansion, and to use as the basis for such a bill provisions of section 105 of H.R. 2944 as passed by the subcommittee. As mentioned, the keys to transmission expansion are siting and pricing reform. Although there is not currently consensus about what to do on transmission siting, there is broad support for the pricing provisions of H.R. 2944. This is evidenced by the fact that those provisions not only were approved by voice vote during the subcommittee markup, and that they are part of the bipartisan Sawyer bill, but that similar provisions are also included in S. 2098, the Murkowski-Landrieu bill.

15. **Question:** Does your group support the development of uniform interconnection standards? If so, what should be those standards.

**Response:** Our group has not taken a position on the development of uniform interconnection standards.


16. **Question:** Your letter notes that you would not support any additional authority being granted to FERC to address the issue of market power. With respect to market power, the Department of Energy states: "because utilities have legally acquired their current monopoly status and control over generation under a previous regulatory regime, existing Federal law is inadequate to address this problem." Do you agree or disagree with this statement? Please explain.

**Response:** We disagree with the part of the statement that generation is today a monopoly. Of course, no one disputes that electric service today, including the generation of power, derives from the industry's history as a regulated monopoly.

The deeply flawed Department of Energy market power study is rife with internal inconsistencies, inappropriate inputs and improper conclusions. We think its usefulness in the legislative arena is limited at best.

Again, thank you for the opportunity to provide these responses. We would be delighted to provide further detail or other assistance at your request.

Sincerely,



Patrick J. McCormick III